HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.15300 of 2004

Between:

P. Govinda Rao

… Petitioner

And

Union of India rep. by its Secretary,
Ministry of Home Affairs, and another.

… Respondents

:: ORDER::

Counsel for the petitioner: Sri A. Rajendra Babu

Counsel for respondent No.1: Sri A. Rajasekhar Reddy,
Assistant Solicotor General

Counsel for respondent No.2: Government Pleader for Revenue

December 05, 2006

In this petition, the petitioner has prayed for issue of a mandamus to the respondents to pay him pension under Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the 1980 Scheme') from the date of application.

The petitioner participated in Anti-Nizam Government Movement. This is evinced from letter dated 18-11-1992 vide which Secretary to Government of Andhra Pradesh, Revenue Department forwarded his case to the Deputy Secretary to Government of India, Ministry of Home Affairs, New Delhi recommending for grant of pension under the 1980 Scheme. After waiting for eight years, the petitioner and two others filed Writ Petition No.7777 of 2000 for issue of a mandamus to the respondents to consider and decide their claim for grant of pension. By an order dated 21-9-2000, the learned Single Judge disposed of the writ petition with a direction to respondent No.1 to consider the application of the petitioner and two others for grant of pension under the 1980 Scheme and pass appropriate orders within three months from the date of the order.

On account of failure of respondent No.1 to comply with the aforementioned order, the petitioner filed C.C.No.1075 of 2002. During the pendency of the contempt case, the Government of India sanctioned pension to the petitioner with effect from 21-9-2000 i.e. the date of the order of the High Court. This was communicated by Under Secretary to the Government of India, Ministry of Home Affairs to PAO (Pension and Miscellaneous), Ministry of Home Affairs, New Delhi. A copy of that letter was also sent to the petitioner so as to enable him to send requisite documents to the PAO (Pension and Miscellaneous), Ministry of Home Affairs.

Learned counsel for the petitioner relied on the judgment of Supreme Court in **Mukundlal Bhandari vs. Union of India**[1] and

argued that the petitioner is entitled to the benefit of pension under the 1980 scheme from the date of application and, therefore, a direction be issued to respondent No.1 to pay him arrears of pension.

Sri A.Rajasekhar Reddy, Assistant Solicitor General made strenuous efforts to persuade the Court to negative the claim of the petitioner by arguing that in terms of policy decision taken by the Government of India, those found eligible for grant of pension under the 1980 Scheme by being treated as freedom fighters who had taken part in Hyderabad Liberation Movement, are entitled to pension only from the date of sanction and not from the date of application.

Sri Reddy also made a suggestive argument that petitioner was sanctioned pension notwithstanding the fact that his status as freedom fighter was doubtful.

I have considered the respective submissions and perused the record. In regard to the last submission of the learned Assistant Solicitor General, it is sufficient to observe that there is nothing in the language of communication dated 28-4-2003 to show that the Government of India had ever doubted the credibility of the claim of the petitioner to be treated as freedom fighter who had taken part in Hyderabad Liberation Movement. The Assistant Solicitor General has not produced any other document before the Court to show that the petitioner's status as a freedom fighter was doubted by any of the functionaries of the Government of India. Therefore, the argument of the learned counsel cannot be accepted and the petitioner cannot be denied benefit of pension from the date of application by assuming that he was sanctioned pension under the 1980 Scheme without determining his entitlement to receive such pension by being treated as a freedom fighter.

In **Mukundlal Bhandari** (supra), the Supreme Court considered a similar question and held as under:

> "Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should

be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished."

By applying the ratio of the above mentioned judgment to the facts of this case, I hold that the petitioner is entitled to pension from the date of application and the respondents committed a grave illegality by not entertaining his claim.

In the result, the writ petition is allowed. The respondents are directed to pay pension to the petitioner with effect from the date of application. Needful be done within three months from the date of receipt of certified copy of this order by the Government of India.

G.S. SINGHVI, CJ

December 05, 2006

svs

---

[1] AIR 1993 SC 2127